

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

PATRICK FAGAN, CHRISTINE FAGAN

CHAPTER 13  
CASE NO. 08-22991

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PATRICK FAGAN, CHRISTINE FAGAN

Plaintiffs,

Adversary Case No.:09-08292

-against-

ANSWER

CJP ABSTRACT, LLC,  
COMMONWEALTH LAND TITLE INSURANCE  
HOMEQ SERVICING CORP.,  
WACHOVIA BANK,  
ARGENT MORTGAGE COMPANY,  
AMC MORTGAGE SERVICES, INC.,  
WELLS FARGO BANK, N.A.  
JOHN DOE, JANE DOE, XYZ CORP.,  
fictitious names for substitution (sic) of parties  
when discovered

Defendants.

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BARCLAYS CAPITAL REAL ESTATE DBA HOMEQ SERVICING S/H/A HOMEQ SERVICING  
CORP. AND WELLS FARGO BANK, N.A. AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT  
DATED AS OF AUGUST 1, 2005 ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2005-  
WHQ4 S/H/A WELLS FARGO BANK, for its answer to the complaint, alleges as follows:

1. Denies knowledge or information as to each of the allegations in paragraph 1  
except to the extent plaintiff accuses the answering defendants of violations of the recited  
statutes and seeks relief from the answering defendants, it denies such allegations.

2. Denies knowledge or information as to each of the allegations in paragraphs 2, 3, 4, 5, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 39, 40, 41, 43, 44, 45, 54, 55, 56, 57, 59, 62, 62, 63, 64, 65, 66, 67, 75, 76, 80, 84, 85, 102, 103, 105, 123 and 146 of the complaint.

3. Upon information and belief, admits the allegations in paragraph 6 and 10.

4. Denies the allegations in paragraphs 20, 21 and 98 except admits that in May, 2005, Patrick Fagan signed an adjustable rate note which was secured by a mortgage given to Argent Mortgage Company LLC and that the mortgage was executed by Patrick Fagan, Christine Fagan and Nicole Fagan-Blau.

5. Denies the allegations in paragraphs 26 and 27, except admits that the plaintiffs were not current in their mortgage payments and that all sums received were not necessarily applied to the principal balance or to interest.

6. Denies the allegations in paragraph 28, except admits that the Note, at paragraph 5, contains provisions as to prepayment, and such provisions are not applicable to the circumstances herein.

7. Denies the allegations in paragraphs 29 and 30, except admits that the mortgage contains provisions regarding the application of sums received when the mortgage is current.

8. Denies the allegations in paragraphs 31, 32, 33, 34 and 35 except admits that sums were submitted and that the mortgage contains provisions regarding the application of sums received when the mortgage is current.

9. Upon information and belief, denies knowledge or information as to the allegations in paragraphs 7, 24, 25, 36, 37, 38, 42, 46, 47, 48, 49, 50, 51, 52, 70 and 71.

10. Denies the allegations in paragraphs 92 and 93 except admits that the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. contains regulations regarding debt collectors.

11. Denies the allegations in paragraph 53, 58, 72, 73, 77, 78, 79, 81, 82, 86, 87, 88, 89, 90, 94, 95, 96, 99, 100, 107, 108, 110, 112, 113, 114, 116, 117, 118, 119, 120, 122, 124, 125, 126, 127, 129, 130, 131, 132, 133, 135, 136, 137, 138, 139, 140, 142, 143, 144, 147, 148 and 149.

12. Denies the allegations in paragraph 104 except admits that a default letter or collection call may have been made, as appropriate and allowable.

13. Denies the allegations in paragraph 111, except admits that the 12 C.F.R. §226.20 (c ) should be examined in its entirety to accurately ascertain its requirements.

14. Answering defendants repeat their answers in response to paragraphs 61, 68, 74, 83, 91, 97, 101, 106, 109, 115, 121, 128, 134, 141 and 145 .

#### FIRST AFFIRMATIVE DEFENSE

15. Each of the claims is barred in whole or in part, for failure to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

16. The claims are barred by the applicable statutes of limitations.

#### THIRD AFFIRMATIVE DEFENSE

17. The claims are barred by laches.

#### FOURTH AFFIRMATIVE DEFENSE

18. The claims are barred, in whole or in part, based on the doctrines of estoppel, waiver and/or ratification.

FIFTH AFFIRMATIVE DEFENSE

19. Any claim, based in whole or in part, upon allegations that are inconsistent with the terms of the note and mortgage, is barred by the Statute of Frauds.

WHEREFORE, it is respectfully requested that the Court dismiss the complaint, together with attorney's fees, costs, disbursements and such other and further relief as may be just and proper.

Dated: Plainview, New York  
October 9, 2009

ROSICKI, ROSICKI & ASSOCIATES, P.C.



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Catherine Jones

Docket No. 07 Civ 4493

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE;

PATRICK FAGAN, CHRISTINE FAGAN

Case No. 08-22991

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PATRICK FAGAN, CHRISTINE FAGAN  
PLAINTIFFS

-AGAINST-

CJP ABSTRACT, LLC, ET AL.  
Defendants.

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ANSWER

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